**MGS response to the EHRC Code of Practice Consultation**

Museums Galleries Scotland is the national development organisation for museums and galleries across Scotland. We are guided by our organisational values and the sector strategy both of which headline and champion inclusion.

We have concerns that the content and process of the EHRC Code of Practice does not uphold the spirit of inclusion. Our understanding is that the EHRC did not consult with any trans people or trans organisations in the development of this guidance. The shorter than usual consultation period also meant we were not able to consult widely with the sector and we are mindful that their voices and experiences are missing.

What stands out most starkly is that there is no guidance on how to include trans people, there is only information on how to exclude them. This guidance has not made sufficient effort to offer advice to museums and organisations who wish to remain or become trans inclusive on how they could do so.

Due to the lack of clarity in the guidance there is a significant potential that the human rights of trans people will be impacted for example, being banned from toilets/groups/events that align with their lived or expressed gender.

There is no acknowledgement or reference to intersex people, despite there being 1.1 million intersex people in the UK. (https://www.manchester.ac.uk/about/magazine/features/rights-of-intersex-children/)

When there is a need to ‘prove’ your sex, what proof will be acceptable given gender recognition certificates are not, nor are altered birth certificates - but how would you know? It is likely this role would fall on front-of-house staff, which we believe puts undue pressure on them to do this ‘in a sensitive way which does not cause discrimination or harassment’.

The practical application of policing toilets is unfeasible as; to avoid discrimination, it would require every single person using toilets to be checked adding substantial workload and staff costs to undertake this role. The guidance implies that to allow trans people to use toilets that best fit their identity rather than their biological sex would put organisations at risk of legal consequences. Yet, to not check everyone could lead to individuals in museums taking decisions to exclude trans people based on subjective tests, related largely to a person’s appearance. This will increase the discrimination and harassment that trans people face and potentially put both trans and non-trans people in humiliating and offensive situations.

What happens if people do not have sufficient proof?

For some museums, they may need to change their toilet facilities to avoid the higher risk of legal consequences, however, there is unlikely to be capacity or resource for many of them to do this, putting them in a difficult position. Even if they receive resource to do this, museums may still be at risk of acting unlawfully while trying to accommodate everyone in the meantime. Without clear guidance, unintended consequences could include some museums temporarily closing to avoid breaching the law while they invest the required time and resources to ensure adequate facilities.

If museums cannot change their facilities, this risks trans people having no facilities to use at all.

We are aware of examples of members of the public policing toilets at heritage sites by making assumptions based on stereotypes. It is important to note that this disproportionately impacts gender non-conforming people, lesbian women, and Black and brown women. It creates an environment of suspicion and policing of everyone’s gender presentation, including cisgender people, and increases the risks of harassment, distress, and offence to everyone.

Included in the EHRC Code of Practice, there is guidance around holding gendered events and how, if they are trans inclusive, this means they must also be open to the opposite sex. Many events happen in museum venues which may not be organised by the museum itself. It is not clear in the guidance at what point the venue is liable for ensuring these groups are adhering to the guidance. Or how people who run such groups are expected to identify trans applicants ‘in a sensitive way which does not cause discrimination or harassment’ and without breaching privacy rights.

To end, there is also a question that arises for MGS as a funder. It is not clear what the guidance means for our funding criteria or expectations for our grant recipients.

We strongly encourage the EHRC to review their processes around this guidance and take the necessary time to understand the impacts and needs of trans individuals and organisations committed to trans inclusion.